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December 4, 2020

Via Electronic Mail

Thomas P. Carroll
Acting Director, Air Enforcement Division
U.S. Environmental Protection Agency
MC 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: *United States v. Orion Engineered Carbons, LLC*, Consent Decree (Case No. 6:17-cv-01660) – Notice of Intent to Assert Claim of Force Majeure – Seventh Supplemental Update

Dear Mr. Carroll:

Orion Engineered Carbons, LLC (Orion) provides this letter in response to EPA's letters dated April 24, 2020 and October 21, 2020. EPA's April 24 letter requested updates regarding Orion's March 23, 2020 notice of intent to assert force majeure. EPA's April 24 letter requested an initial response within four weeks and supplemental updates every four weeks thereafter. Orion provided its initial response on May 21, 2020 (the "Initial Response") and supplemental updates each month thereafter. This letter is Orion's seventh supplemental update.

As stated in Orion's last update, Orion respectfully disagrees with the allegations in EPA's October 21 letter regarding the adequacy of Orion's force majeure claim. Under the Consent Decree, force majeure is defined as "any event arising from causes beyond the control of Defendant or its vendors or Contractors . . . that causes a delay or impediment to performance in complying with any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation." The COVID-19 pandemic is such a force majeure event.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] However,
Orion has used best efforts to fulfill its obligations under the Consent Decree despite these impediments and continues to do so. [REDACTED]
[REDACTED]

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Although Orion disagrees with EPA's allegations, Orion understands EPA's concerns and is committed to working cooperatively to address those concerns. To that end, Orion provides herein several important updates regarding the effects of the COVID-19 force majeure event and the ways in which Orion is utilizing best efforts to mitigate those effects.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

¹ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Will Feuer, CNBC, *Key coronavirus forecast predicts over 410,000 total U.S. deaths by Jan. 1: 'The worst is yet to come,'* <https://www.cnbc.com/2020/09/04/key-coronavirus-forecast-predicts-over-410000-total-us-deaths-by-jan-1.html> (Sept. 6, 2020).

Circumstances Faced by Orion’s Competitors Are Materially Different

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We ask that you treat the redacted portions in the public version of this submittal as confidential business information (CBI) pursuant to 40 C.F.R. Part 2. Orion's updated responses to the questions in EPA's April 24 letter follow.

Ivanhoe

1. Clarify the meaning of the term, "pollution control projects required by the CD at [] Ivanhoe."

No change since Initial Response.

2. Do the PM Early Warning Systems, baghouses and incineration devices necessary to achieve MACT compliance remain operational?

No change since Initial Response.

3. Are any of Orion's [REDACTED] employees working onsite, and if so, how many?

[REDACTED]

[REDACTED]

4. What activities are the employees performing? Are they making carbon black?

[REDACTED]

[REDACTED]

[REDACTED]

5. Provide any updates received from Defendant's contractors related to COVID-19.

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6. Provide any updates, orders, or directives from state and local officials related to COVID-19.

The following is a brief summary of orders issued since the sixth supplemental update that affect Orion:

Louisiana

November 5: Governor issues Proclamation 158 keeping Louisiana in Phase 3 of reopening, continuing the statewide mask mandate, and requiring businesses like Orion to maintain at least moderate social distancing between all employees.⁴

Governor also issues Proclamation 159 extending emergency provisions imposing travel restrictions on public employees, suspending in-person shareholder meetings, and imposing a variety of restrictions on the operations of government entities, among other measures.⁵

November 6: LDEQ issues Sixteenth Amended Declaration of Emergency and Administrative Order. LDEQ declares that “an emergency exists” and that “measures are necessary to prevent serious threats to life or safety.” The order extends certain regulatory deadlines, among other measures.⁶

Although some restrictions have been lifted, the Governor has made clear that immediate reinstatement may occur at any time: “[S]hould there be an increase in the number of confirmed COVID-19 cases or should the number of COVID-19 related hospitalizations

⁴ State of Louisiana, Proclamation 158 JBE 2020 (Nov. 5, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/158-JBE-2020-State-of-Emergency-Renewing-COVID-19-Resilient-Louisiana.pdf>.

⁵ State of Louisiana, Proclamation 159 JBE 2020 (Nov. 5, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/159-JBE-2020-State-of-Emergency-COVID-19-Extension.pdf>.

⁶ Louisiana Department of Environmental Quality, Sixteenth Amended Declaration of Emergency and Administrative Order (Nov. 6, 2020), https://www.deq.louisiana.gov/assets/docs/emergency_declarations/SixteenthAmendedDEAOCovid19.pdf.

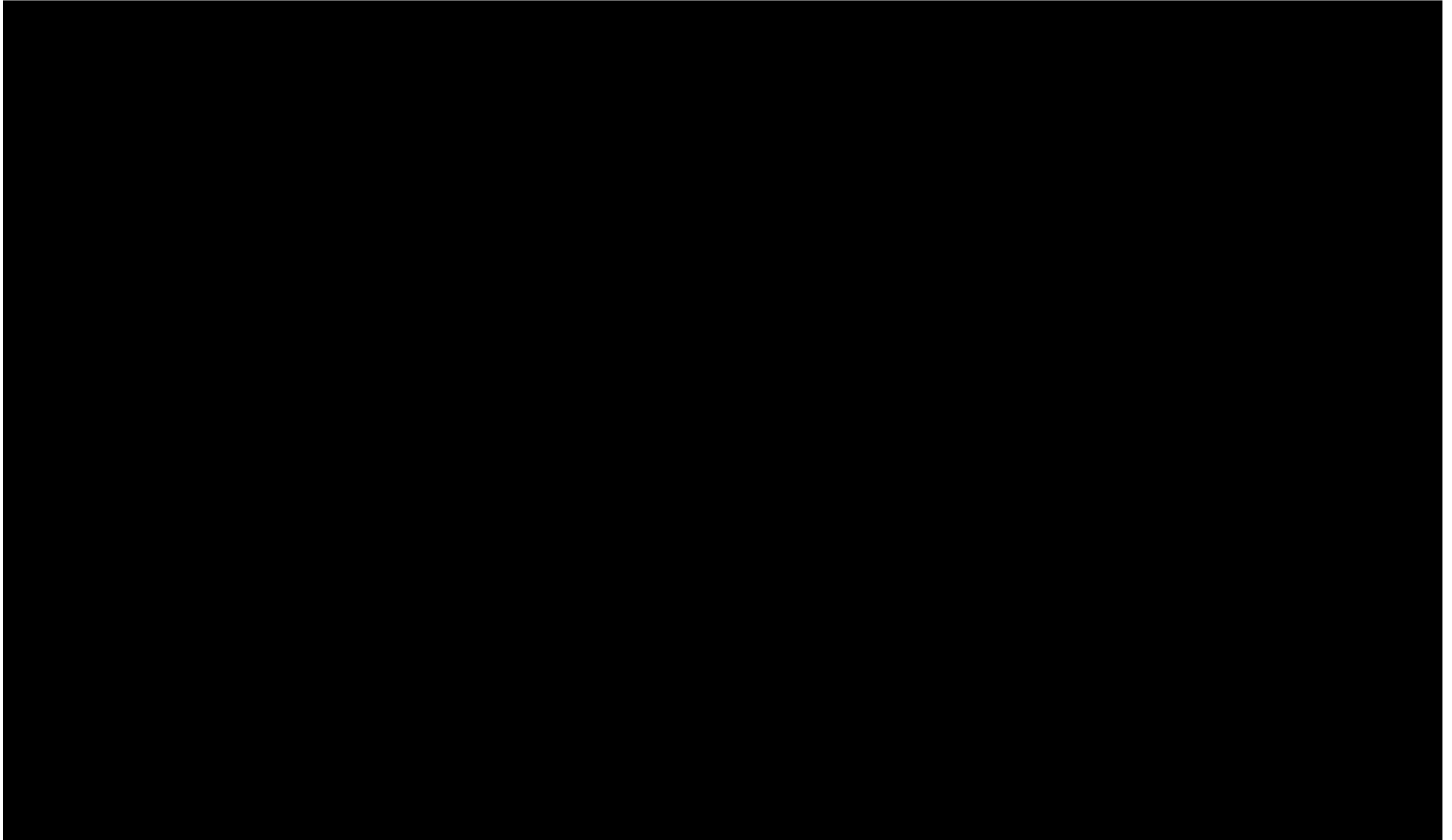
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threaten the ability of the health care system to properly respond, it may be necessary to go back to the full restrictions in the [original] Stay at Home order.”⁷

7. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, (broken out by month), that specifies the work being performed, the number of contractors expected to be on site (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.

[REDACTED]

⁷ State of Louisiana, Proclamation 158 JBE 2020 (Nov. 5, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/158-JBE-2020-State-of-Emergency-Renewing-COVID-19-Resilient-Louisiana.pdf>.



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Conclusion

Orion remains committed to working with EPA to adhere to federal and state orders and to protect the health and safety of its employees, contractors, and communities. Orion will continue to provide EPA updates every four weeks. However, in light of the upcoming holidays and that Orion's next update is currently due on New Year's Day, Orion respectfully requests that the deadline for its next submission be extended to January 15, 2021.

Sincerely,



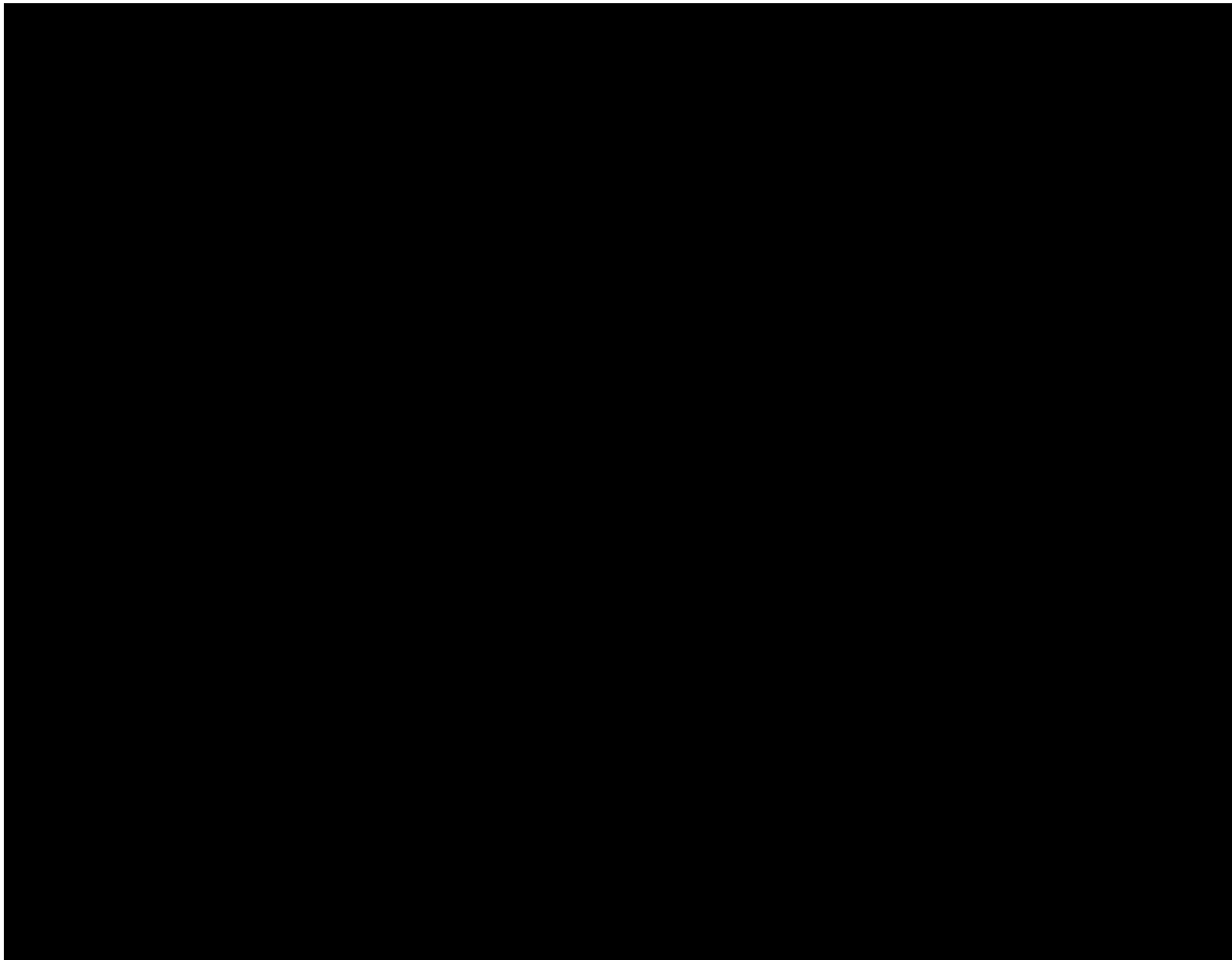
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Chief Executive Officer
Orion Engineered Carbons, GmbH

cc: Kellie Ortega, U.S. Environmental Protection Agency
David Friedland, Beveridge & Diamond, P.C.
Jason Dunn, U.S. Department of Justice
Katherine Abend, U.S. Department of Justice
Celena Cage, Louisiana Department of Environmental Quality
Brandon Williams, Louisiana Department of Environmental Quality
Dwana King, Louisiana Department of Environmental Quality

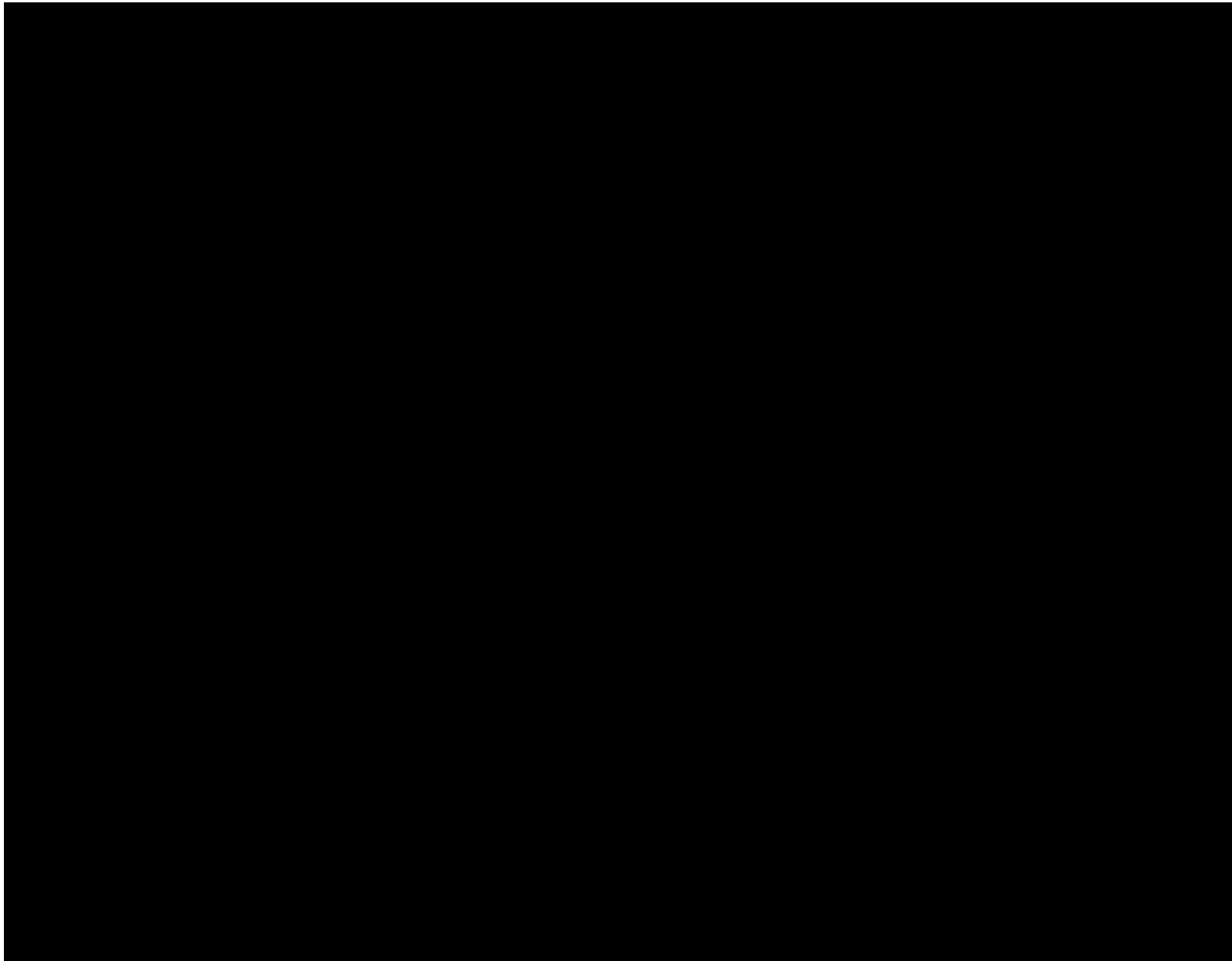
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ATTACHMENT 1

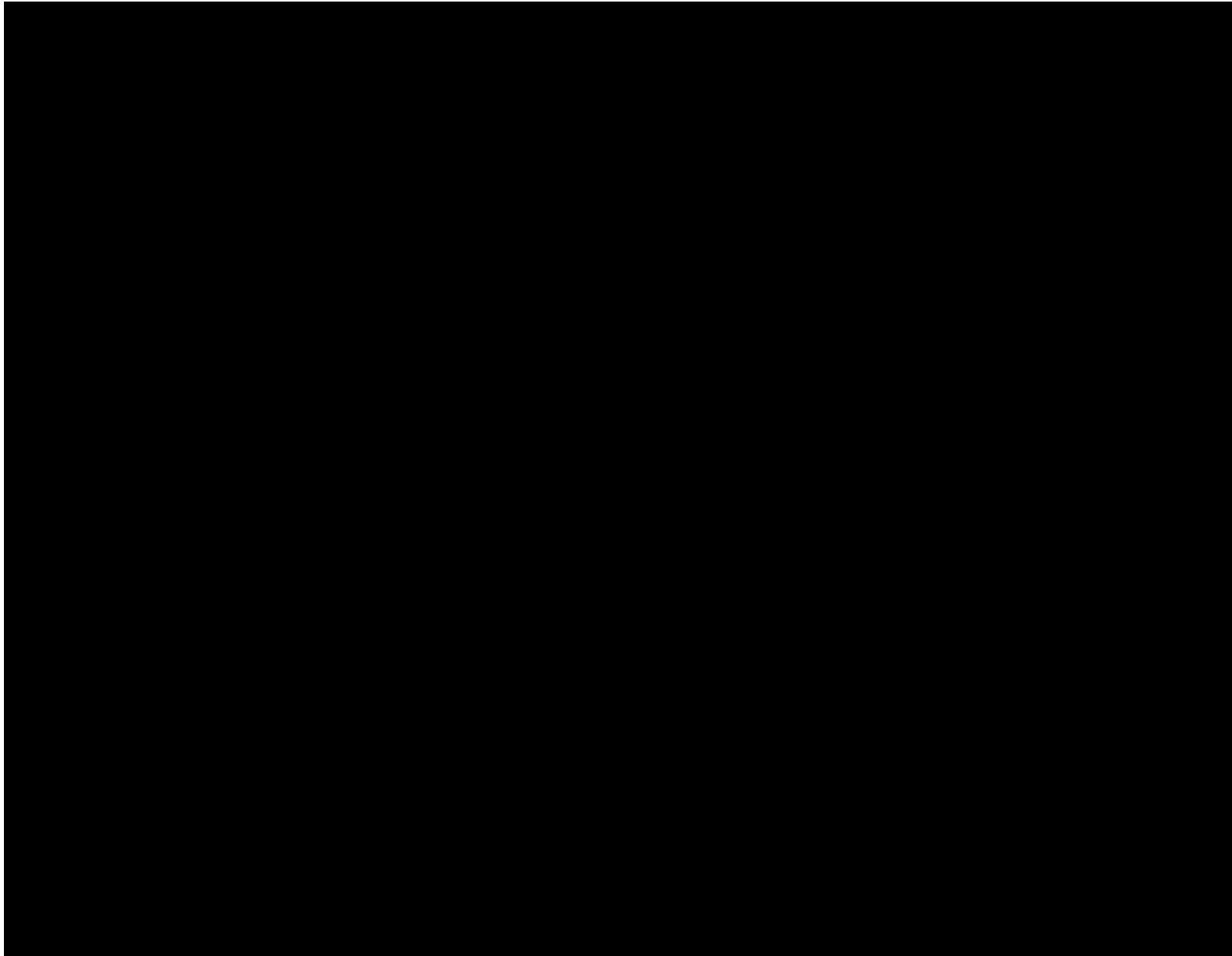
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